IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.785 of 2007

Elumalai .. Petitioner

Vs.

1. The State, represented by
the Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Villupuram District
at Villupuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against Selvi, wife of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenue is a Bootlegger and she has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the husband of the detenue has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the second respondent pertaining to the order made in C2/19420/2007, dated

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5.5.2007, in detaining the detenue under the Tamil Nadu Act 14 of 1982 as a Bootlegger, to quash the same and to direct the respondents to produce the detenue, now detained in the Special Prison for Women, Vellore before this Court and to set her at liberty.

3. Heard Mr.O.S.Thilak Pasumbadiar, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

4. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation dated 28.5.2007 and the same has rendered the detention illegal.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476* .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide *Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.*

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide *Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.*

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other

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words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N., (1999) 1 SCC 417.*

6. In the instant case, the impugned order of detention came to be passed on 5.5.2007. A representation dated 28.5.2007 was made to the detaining authority and the same was received by it on 31.5.2007 and remarks were called for on 1.6.2007. But, the representation was received by the Detaining Authority only on 11.6.2007, viz., after a delay of 10 days. Even though 2.6.2007, 3.6.2007, 9.6.2007 and 10.6.2007 happen to be public holidays, still a delay of six days exists. This delay was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for six days (excluding public holidays). There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in *Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194* is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be

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supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .*

The delay of six days which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 5.5.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her custody is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Collector
   and District Magistrate
   Villupuram District at Villupuram.

3.The Superintendent,
Special Prison & Women, Vellore.

4.The Joint Secretary to Government,
Public (Law and Order),Fort St. George,
Chennai.

5. The Public Prosecutor
   High Court, Madras.

VC (CO)
km/27.9.

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